

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: DOC, DNR, Law Enforcement Section TITLE NUMBER: 58

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Commercial Whitewater Outfitters

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

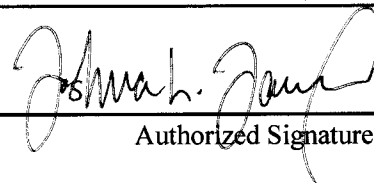
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB170

SECTION 64-10-2(g), PASSED ON 03-14-15

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE

FOLLOWING DATE: 05-11-15


Authorized Signature

FILED

**TITLE 58
LEGISLATIVE RULE
DEPARTMENT OF COMMERCE
DIVISION OF NATURAL RESOURCES**

2015 MAY 11 A 10:34

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 12
COMMERCIAL WHITEWATER OUTFITTERS**

§58-12-1. General.

1.1. Scope and Purpose. -- The purpose of this rule is to provide for the regulation of commercial whitewater rafting, outfitting, and related activities to assure safe operations and protect the environment.

1.2. Authority. -- W. Va. Code §20-2-23a.

1.3. Filing Date. -- May 11, 2015

1.4. Effective Date. -- May 11, 2015

§58-12-2. Definitions.

2.1. "Commercial Watercraft Clinic" means an instructional class for the purpose of teaching the Eskimo roll, paddling, reading whitewater, navigating, portaging, surfing and scouting whitewater, as applicable.

2.2. "Commercial Watercraft Clinic Instructor" means a person who is qualified to teach a commercial watercraft clinic pursuant to the relevant American Canoe Association (ACA), or comparable, industry standards, and who has appropriate first aid and CPR training.

2.3. "Commercial Whitewater Guide" or "trip guide" means any person who is an owner, agent or employee of a commercial whitewater outfitter, and who is qualified and authorized to provide services for whitewater expeditions in the state in accordance with W. Va. Code §§20-2-23 and 23a and this rule.

2.4. "Commercial Whitewater Expedition" means the act of floating, traveling or traversing whitewater, in any manner, using a watercraft by a commercial whitewater outfitter.

2.5. "Commercial whitewater outfitter" means any person, partnership, corporation, or other organization, or any combination thereof, duly licensed, authorized and operating from within or from without the State, which for monetary profit or gain, provides whitewater expeditions or rents watercraft or equipment for use in commercial whitewater expeditions on any river, portions of rivers, or waters of the State.

2.6. "Division" means the Division of Natural Resources.

2.7. "Evaluation Trip" means a trip provided by a commercial whitewater outfitter, licensed in this state, for the purpose of determining that the guide trainee meets the criteria outlined in section 12 of this rule.

2.8. "Familiarization Trip" means a trip provided by a commercial whitewater outfitter for the purpose of familiarizing a guide trainee on the river or sections of river to be guided.

2.9. "Guide Trainee" means a person who is attempting to become qualified as a commercial whitewater guide in accordance with the provisions of this rule.

2.10. "Outfitter" means any person who, operating from any temporary or permanent camp, private or public lodge, or private or incorporated home situated within this state, provides for monetary profit or gain, saddle or pack animals or other animals, vehicles, boats, conveyances or equipment, or guide services for any person or persons hunting game animals, game birds, fishing or taking expeditions, on both land and water, in this state. The term "outfitter" shall not include, however, any person who occasionally for accommodation or favor rather than profit or gain, rents equipment to hunters, fishermen or other persons as a service incidental to his or her principal occupation or business without advertising outfitter or guide services or holding out to the public his or her offering of those services.

2.11. "Rent" means to provide for monetary profit or gain any equipment or watercraft, used in a commercial activity. This term also includes the offering for sale with a written or oral agreement or any other arrangement, to repurchase, at a reduced cost, the equipment at the completion of its use.

2.12. "Training Trip" means a trip provided by a commercial whitewater outfitter licensed in the state which offers to the guide trainee substantial opportunity to acquire the necessary skills required by subsection 12.1 of this rule.

2.13. "Underway" means that the watercraft is not at anchor, secured to the shore, or aground.

2.14. "Watercraft" means a vessel in the commercial whitewater outfitter's fleet used for commercial whitewater expeditions, or other watercraft in an outfitter's fleet, including, but not limited to the following vessels that further meet the requirements set forth in this rule:

2.14.a A canoe;

2.14.b An inflatable kayak or duckie rated to carry one (1) or two (2) persons;

2.14.c. An inner tube;

2.14.d. A kayak or C-1 that is a hard shell boat that is made of plastic, fiberglass or other hard material, not rubberized material;

2.14.e. A raft that is an inflatable craft rated to carry three (3) or more passengers;

2.14.f. A river board; or

2.14.g. A stand-up paddle board.

2.15. "Whitewater" means water, in part of a river, that is white because it is moving swiftly over rocks, including rapids and falls.

2.16. "Whitewater Zone" means all rivers, portions of rivers or other waters of the state as identified in subsections 3.1 and 9.12 of this rule.

§58-12-3. Designated Whitewater Zones.

3.1. The following rivers, portions of rivers, or waters of the State are designated as whitewater zones. For the purposes of conducting studies as required by W. Va. Code §20-2-23a, the New, Gauley, Cheat, Shenandoah and Tygart Valley Rivers are further divided into special "study zones".

3.1.a. Cheat River from its confluence with Saltlick Creek to the confluence of Big Sandy Creek.

3.1.a.1. From its confluence with Saltlick Creek to the State Route 26 Bridge at Albright.

3.1.a.2. From the State Route 26 Bridge at Albright to the confluence of Big Sandy Creek.

3.1.b. Gauley River from the Summersville Lake Dam to the Railroad Bridge at Jodie.

3.1.b.1. From the Summersville Lake Dam to Mason's Branch Road.

3.1.b.2. From Mason's Branch Road to the Railroad Bridge at Jodie.

3.1.b.3. From the Bridge at Jodie to Confluence at Gauley Bridge.

3.1.c. New River from its confluence with the Greenbrier River to its confluence with the Gauley River as follows by section:

3.1.c.1. Brooks Falls Canyon: From the Confluence of the Greenbrier River to

Sandstone Falls..

- 3.1.c.2. Sandstone Canyon: From Sandstone Falls to Glade Creek.
- 3.1.c.3. Glade Creek Canyon: From Glade Creek to Piney Creek.
- 3.1.c.4. Stonecliff Canyon: From Piney Creek to Stonecliff.
- 3.1.c.5. Surprise Canyon: From Stonecliff to Manns Creek.
- 3.1.c.6. New River Gorge: From Manns Creek to Teays Landing.
- 3.1.c.7. Hawks Nest Lake: From Teays Landing to Hawks Nest Dam.
- 3.1.c.8. Hawks Nest Canyon: From Hawks Nest Dam to the confluence of the Gauley River.

3.1.d. Shenandoah River from Millville to its confluence with the Potomac River.

3.1.e. Tygart Valley River from the confluence of Mill Creek at Belington to the County Route 62 Bridge at Colfax.

3.1.e.1. From the confluence of Mill Creek at Belington to the covered bridge at Philippi.

3.1.e.2. From the covered bridge at Philippi to the Tygart Lake Dam.

3.1.e.3. From the Tygart Lake Dam to the County Route 62 Bridge at Colfax.

§58-12-4. Commercial Whitewater Outfitters License.

4.1. A commercial whitewater outfitter shall obtain a license from the director prior to the commencement of operations on any waters of the State.

4.2. A commercial whitewater outfitter issued a license by the director shall comply with the terms and conditions of that license.

4.3. The director may issue new licenses valid for one or more designated whitewater zones upon a finding by him or her, and with the approval of the Whitewater Commission, that the commercial whitewater outfitters currently operating in the same whitewater zone or zones have not fully used the daily use limits set under the provisions of section 8 of this rule. The director shall file public notice of his or her intent to issue new licenses for a designated whitewater zone immediately upon such a finding.

4.4. Before any outfitting services are offered or rendered, each commercial whitewater outfitter shall execute a surety bond in the penal sum of one thousand dollars (\$1,000) payable to the State of West Virginia and shall hold valid public liability insurance in the name of the commercial whitewater outfitter with minimum coverage of three hundred thousand dollars (\$300,000) per occurrence for bodily injury and twenty-five thousand (\$25,000) aggregate for property damage. The commercial whitewater outfitter shall submit proof of liability insurance coverage and the surety bond to the director not later than February 15th of each year. The issuing insurance company shall furnish immediate written notification of the cancellation of the policy and/or the surety bond to the director. The requirement of cancellation notification shall be printed on the bottom of every policy.

4.5. The commercial whitewater outfitter shall pay its annual license fees to the Division not later than February 15th.

4.6. An applicant for a commercial whitewater outfitter's license for the ensuing year shall provide the director with the information specified on the Division's application and any additional information that the director considers necessary for consideration of the application by March 15th. Upon review and consideration by the whitewater commission, the director shall send the applicant a written reply by September 30th stating whether or not the license will be granted.

4.7. A commercial whitewater outfitter shall keep a current record or file containing the name, address, age, and residency of all persons who have used his or her services. An outfitter operation shall keep a current record or file containing the name, address, age, and residency of all persons who have used his or her services in a whitewater zone. These records shall be kept for a period of two (2) years and shall be made available to the director upon request.

4.8. Whitewater Guide-Trainee Information Sheet.

4.8.a. Individual guides are responsible for completing the Whitewater Guide-Trainee Information Sheet furnished by the division. The commercial whitewater outfitter shall provide forms to individual guides or guide-trainees.

4.8.b. A commercial whitewater outfitter shall not employ a guide trainee for the purpose of guiding on a commercial whitewater expedition until it has received the guide trainee's information sheet.

4.8.c. A West Virginia commercial whitewater guide is not required to supplement the guide trainee information sheet except to show qualifications for additional rivers or sections of rivers.

4.8.d. The commercial whitewater outfitter is responsible for keeping on file the original or a certified copy of the completed whitewater guide-trainee information sheet. These records shall be maintained by the commercial whitewater outfitter for two (2)

years following the guide's last date of employment. The commercial whitewater outfitter shall provide the guide or guide trainee with a certified copy of the trainee information sheet and shall forward a copy to the Division of Natural Resources, Law Enforcement Section, 324 Fourth Avenue, South Charleston, West Virginia 25303-1228 upon request.

4.9. Whitewater Guide Trip Leader Information Sheet.

4.9.a. Individual guides shall complete the Whitewater Guide Trip Leader Information Sheet furnished by the division.

4.9.b. A commercial whitewater outfitter shall not employ a guide as a Trip Leader until it has received the guide's Trip Leader Information Sheet.

4.9.c. A West Virginia commercial whitewater guide Trip Leader is not required to supplement the guide Trip Leader information sheet except to show qualifications for additional rivers or sections of rivers.

4.9.d. The commercial whitewater outfitter is responsible for keeping on file the original or a certified copy of the completed whitewater guide Trip Leader information sheet. These records shall be maintained by the commercial whitewater outfitter for two (2) years following the guide's last date of employment. The commercial whitewater outfitter shall provide the guide Trip Leader with a certified copy of the guide Trip Leader information sheet and shall forward a copy to the Division of Natural Resources, Law Enforcement Section, 324 Fourth Avenue, South Charleston, West Virginia 25303-1228 upon request.

4.10. New Hires

4.10.a. Guides and guide-trainees shall submit the completed Whitewater Guide Trainee Information Sheet on the first day of employment with a commercial whitewater outfitter.

§58-12-5. Special Whitewater Study and Improvement Fees.

5.1. In accordance with W. Va. Code §20-2-23a, there will be a special whitewater study and improvement fee paid by each commercial whitewater outfitter or outfitter for each customer that is transported in a commercial activity in the study zones on the Cheat, Gauley, New, Shenandoah and Tygart Valley rivers.

5.2. Fee Amount.

5.2.a. The study and improvement fee is thirty-five cents (\$.35) for each customer transported on a commercial activity in study zones on the Cheat, New, Shenandoah and Tygart Valley rivers.

5.2.b. The study and improvement fee is seventy cents (\$.70) for each customer transported on a commercial activity in study zones on the Gauley River.

5.2.c. If a commercial activity exceeds one day in duration, the appropriate fee shall be collected for each day, or part of a day, of the trip.

5.3. The commercial whitewater outfitter or outfitter shall pay these fees to the division by the fifteenth (15th) day of the month following the month in which the fee was assessed and deposit them in the Whitewater Study and Improvement Fund.

5.4. Gauley River Study and Improvement Fee.

5.4.a. For the purpose of improving and promoting the whitewater industry on the Gauley River, one-half of all study and improvement fees collected pursuant to subdivision 5.2.b. of this rule shall be used to stock the Gauley River with fish during the spring and fall seasons of each year to mitigate the loss of fishing opportunities resulting from the additional water volume on the Gauley River. The Whitewater Commission may hire a private contractor to administer the fish stocking program.

5.4.b. The Whitewater Commission shall review the amount of the study and improvement fee collected pursuant to subdivision 5.2.b. of this rule every four years to determine whether the fee is sufficient to assure adequate funding for the fish stocking program.

§58-12-6. Transfer of License.

6.1. A commercial whitewater outfitter shall obtain prior written approval of the director to sell or transfer a commercial whitewater license.

6.2. A commercial whitewater outfitter shall obtain the express written approval of the director to sell or transfer any use allocation or other privilege conferred by a license.

6.3. The director may not withhold approval of a sale or transfer except for just cause.

§58-12-7. Use Allocations.

7.1. The director shall establish, modify, or limit use allocations for all commercial whitewater outfitters operating within a designated whitewater zone in conformance with section 8 of this rule.

7.2. A commercial whitewater outfitter may sell all of his or her use allocation for a designated whitewater zone upon the review and approval of the director. A commercial whitewater outfitter may sell or transfer a portion of his or her use allocation for a designated whitewater zone to another commercial whitewater outfitter holding an allocation on those waters upon the review and approval of the director.

7.3. The director may not withhold approval of a sale or transfer except for just cause.

§58-12-8. Daily Use Limits.

8.1. The director shall set total daily use limits for each designated whitewater zone under the criteria set forth in W. Va. Code §20-2-23a, unless studies contracted for by the division determine that a different daily use limit is appropriate based upon the following criteria:

8.1.a. The assurance of safety in commercial whitewater operations;

8.1.b. The best interests of persons seeking to enjoy whitewater rafting and the interests of the State in the promotion of tourism; and

8.1.c. The sound recreational and ecological use of the State's natural resources.

§58-12-9. Commercial Whitewater Operations.

9.1. Towing rafts through water pools is permitted.

9.2. Motorized watercraft are permitted on the New River between Thurmond and Fayette Station when river flow equals or exceeds sixteen thousand five hundred (16,500) cubic feet per second at Thurmond.

9.3. The director may issue special use permits to commercial whitewater outfitters for the use of motorized watercraft to provide whitewater trips to senior citizens, disabled persons, and other persons who might not otherwise be able to participate in whitewater recreation. The director may also issue special use permits to commercial whitewater outfitters to conduct whitewater trips for the purpose of making documentary recordings or to provide emergency transport services.

9.4. Motorized watercraft shall not pass non-motorized trips unless signaled to do so by the trip leader of the non-motorized watercraft. The non-motorized watercraft shall make all reasonable efforts to facilitate passing of the motorized watercraft.

9.5. While underway, each passenger, trip guide, and trip leader shall wear a securely fastened vest-type personal flotation device as prescribed in subsection 10.1 of this rule. The commercial whitewater outfitter shall maintain all personal flotation devices in a good and serviceable condition.

9.6. Each commercial whitewater expedition shall have a minimum of one (1) trip guide for every ten (10) passengers or any portion thereof. There shall be a minimum of two guides on each commercial whitewater expedition of more than six (6) watercraft.

9.7. There shall be no less than one (1) trip guide on a commercial whitewater expedition on rivers or sections of rivers, unless otherwise designated in subsection 9.12. of this rule.

9.8. A commercial whitewater outfitter may run his or her whitewater expedition in conjunction with another commercial whitewater outfitter's whitewater expedition in order to fulfill the requirements of this subsection.

9.9. There shall be one commercial whitewater trip leader on each commercial whitewater expedition.

9.10. A trip leader may count as a trip guide for the purpose of meeting the requirements of this subsection.

9.11. Each commercial watercraft clinic shall have a minimum of one (1) trip guide for each six (6) customers or any portion thereof.

9.12. The following rivers, portions of rivers or waters of the State are designated as whitewater zones for the purpose of rafting West Virginia's rivers, portions of rivers, or waters of the State to determine the appropriate watercraft, student limits and minimum number of guides per trip by whitewater zones:

9.12.a. Cheat River.

9.12.a.1. From its confluence with Saltlick Creek to the State Route 26 Bridge at Albright there shall be a minimum of one (1) trip guide per trip.

9.12.a.2. From the State Route 26 Bridge at Albright to the confluence of Big Sandy Creek there shall be a minimum of two (2) trip guides per trip. When river flows equal or exceed two-thousand-two-hundred (2,200) cubic feet per second there shall also be a trip guide in every watercraft.

9.12.b. Gauley River.

9.12.b.1. From the Summersville Lake Dam to the Bridge at Jodie there shall be a minimum of one (1) trip guide in each watercraft, except for inflatable kayaks and kayaks.

9.12.b.2. From the Summersville Lake Dam to Mason's Branch Road there shall be a minimum of two (2) trip guides per trip. At flows in excess of one thousand (1,000) cubic feet per second between the Summersville Lake Dam and Sweet's Falls there shall be minimum of one (1) trip guide in each watercraft with the exception of a commercial watercraft clinic.

9.12.b.3. From Mason's Branch Road to the Bridge at Jodie there shall be a

minimum of two (2) trip guides per trip.

9.12.c. New River: From its confluence with the Greenbrier River to its confluence with the Gauley River:

9.12.c.1. From its confluence with the Greenbrier River to the confluence of Manns Creek there shall be a minimum of one (1) trip guide per trip, except as provided in paragraph 9.12.c.5.

9.12.c.2. From the confluence of Manns Creek to Teays Landing there shall be a minimum of one (1) trip guide in each watercraft, except on a commercial watercraft clinic where the instructor and guests are in separate watercraft. Commercial watercraft clinics may be held by a commercial whitewater outfitter. Daily use is restricted to nine (9) students per day per license and the commercial whitewater outfitter must have a ratio of one (1) trip guide per three (3) students. Commercial watercraft clinics are not permitted in this section of the New River on Saturdays between Memorial Day and Labor Day. There shall be a minimum of two (2) trip guides per trip on all other trips.

9.12.c.3. From Teays Landing to the Hawks Nest State Park Dam there shall be a minimum of one (1) trip guide per trip, or a commercial watercraft clinic instructor.

9.12.c.4. From the Hawks Nest State Park Dam to its confluence with the Gauley River there shall be a minimum of two (2) trip guides per trip.

9.12.c.5. From the confluence of the Greenbrier River and the New River to the top of Brooks Falls, and from Stonecliff to Dungen, commercial whitewater outfitters and outfitters may rent inner tubes, canoes, inflatable kayaks, kayaks, stand-up paddle boards and rafts that meet the requirements of section 10 of this rule for use only in these sections of the New River. Trip guides are not required to accompany these rental trips.

9.12.c.5.A. Inner tubes are not permitted at water levels above 5,000 cubic feet per second at the U.S. Army Corp of Engineers Hinton gauge.

9.12.c.5.B. Proper instruction on the use of watercraft, safety and river etiquette is required to be given by the commercial whitewater outfitter or outfitter.

9.12.c.5.C. A customer must wear Type III or V personal flotation devices while underway.

9.12.c.5.D. Inner tubes shall be a commercial grade tube designed for river float trips in good working order, and measuring at least 40 inches in diameter with two air chambers.

9.12.c.5.E. No alcoholic beverages may be consumed while underway.

9.12.d. Shenandoah River from Millville to its confluence with the Potomac River. There shall be a minimum of one (1) trip guide per trip.

9.12.d.1. From the West Virginia border to Millville, commercial whitewater outfitters and outfitters may rent inner tubes, canoes, inflatable kayaks, kayaks, stand-up paddle boards and rafts that meet the requirements of section 10 of this rule for use only in this section of the Shenandoah River. Trip guides are not required to accompany these rental trips.

9.12.e. Tygart Valley River from the confluence of Mill Creek at Belington to the County Route 62 Bridge at Colfax there shall be a minimum of two (2) trip guides per trip.

9.13. No person shall carry a firearm in a watercraft during a commercial whitewater expedition.

9.14. No person may use alcohol while the watercraft is underway during a commercial whitewater expedition.

§58-12-10. Equipment.

10.1. A commercial whitewater outfitter shall provide a Type V vest-type personal flotation device approved by the United States Coast Guard on a commercial whitewater expedition to each passenger to be transported in watercraft by the commercial whitewater outfitter and shall be securely fastened and worn by the passengers while underway. Trip leaders and trip guides shall wear either Type III or Type V vests approved by the United States Coast Guard for commercial whitewater expeditions and shall securely fasten them while underway. Outfitters and commercial watercraft clinics shall provide Type III or Type V personal flotation devices while underway.

10.2. The minimum raft size that may be used on any river is an eight (8) foot, two (2) compartmentalized raft. The size of raft shall be measured from the outside tube surface in the bow to the outside tube surface in the stern when fully inflated, plus or minus six (6) inches.

10.3. Gauley River. At flows in excess of one thousand (1,000) cubic feet per second between Summersville Dam and Sweet's Falls, the minimum watercraft size shall be a twelve (12) foot, four (4) compartmentalized watercraft.

10.4. Every commercial whitewater expedition shall be equipped with the following:

10.4.a. At least one (1) first aid kit per trip.

10.4.b. At the beginning of each trip, each trip leader or trip guide shall possess at least one (1) throw line or throw bag not less than forty (40) feet in length. One (1) professional quality rescue rope which is seventy (70) feet in length shall be carried on each commercial whitewater expedition. The seventy (70) foot rescue rope may be counted as one of the required throw lines or throw bag.

10.5. All watercraft used by a commercial whitewater outfitter or outfitter shall be marked with its name, initials, or an easily recognizable logo, and shall be plainly visible and legible from a distance of one hundred (100) feet.

§58-12-11. Accident Reports.

11.1. Injury Report. If a commercial whitewater outfitter or outfitter receives a report of an injury from a customer or is aware of an injury or accident that requires medical services at an established medical facility and the injury or accident occurs during the performance of a its services from the put-in to the take-out, the commercial whitewater outfitter or outfitter shall file an accident report with the director using the injury report form prescribed by the Whitewater Commission. The form shall include the name, address, and age of the person injured, the nature of the injury, the time and place of the accident and the circumstances of the accident and shall be filed with the director within fifteen (15) days after the accident.

11.2. Property Damage Report. If an accident occurs during the performance of a commercial whitewater outfitter's or outfitter's activities that results in non-vehicular property damage in excess of five hundred dollars (\$500), it shall file a report with the director within fifteen (15) days after the accident. This property damage report shall include the name of the owner of the property; an estimate of the amount of the loss; the time and location of the event causing the damage; and a description of the accident.

§58-12-12. Trip Guides and Trip Leaders.

12.1. Commercial Whitewater Trip Guides. A Commercial Whitewater Trip Guide shall:

12.1.a. Be at least eighteen (18) years old, unless approved in writing by the director; and

12.1.b. Have completed a minimum of fifteen (15) training trips including at least five (5) training trips in the same or similar type of raft used by the commercial whitewater outfitter for commercial whitewater expeditions, two (2) familiarization trips and one (1) evaluation trip on the section of river to be guided, except that on the Shenandoah River only ten (10) training trips will be required plus the two (2) familiarization trips and one (1) evaluation trip. One (1) of the familiarization trips and the evaluation trip shall be in the same or similar type of raft used by the commercial whitewater outfitter for commercial whitewater expeditions. The second familiarization

trip may count as the evaluation trip; or

12.1.c. Have acted as a commercial whitewater guide and completed a minimum of fifteen (15) commercial whitewater expeditions in a raft on a river in which a guide is required in every raft, two (2) familiarization trips and one (1) evaluation trip. The second familiarization trip may count as the evaluation trip;

12.1.4d. Have completed a minimum of forty (40) commercial whitewater expeditions in a raft on a river in which a commercial whitewater guide is required in every raft, two (2) familiarization trips and one (1) evaluation trip in order to be qualified on the Gauley River between Summersville Lake and Mason's Branch. The second familiarization trip may count as the evaluation trip.

12.1.e. Be able to operate watercraft used by the commercial whitewater outfitter on the rivers or sections of rivers to be guided;

12.1.f. Supervise passengers and be capable of giving a suitable orientation talk to the passengers in his or her watercraft on subjects which may include, but not be limited to, safety personal flotation devices and how to stay in the boat and paddle;

12.1.g. Have a valid American Red Cross first aid card or its equivalent and a current CPR certification by either the American Red Cross, or the equivalent;

12.1.h. Have a general knowledge of emergency access and evacuation routes; and

12.1.i. Be familiar with floating and swimming in whitewater conditions in a personal flotation device.

12.1.j. For training and evaluation purposes, a guide trainee may act as a trip guide on a commercial whitewater expedition as long as the guide trainee is directly and actively supervised by a commercial whitewater trip guide who is present in the watercraft.

12.1.k. The commercial whitewater outfitter shall document all familiarization trips and evaluation trips on the guide trainee's Whitewater Guide Information Sheet and maintained with the guide's records.

12.1.l. A commercial whitewater trip guide qualified on any river or portion of a river prior to the effective date of this rule remains qualified on those rivers or portions of rivers as long as he or she meets the requirements set forth in subdivision 12.1.7 of this rule.

12.2. Commercial Whitewater Trip Leaders. Each commercial whitewater expedition shall include a trip leader. A trip leader shall meet all commercial whitewater trip guide qualifications specified in Subsection 12.1 of this rule. In addition, a trip

leader shall:

12.2.a. Be at least twenty (20) years old, unless approved in writing by the director;

12.2.b. Have completed at least six (6) commercial whitewater expeditions as a commercial whitewater guide on the section of river that he or she will act as a trip guide. On the Upper Gauley between Summersville Lake Dam and Mason's Branch a trip leader shall have completed at least twenty (20) commercial whitewater expeditions as a commercial whitewater guide on the section of river that he or she will act as a trip guide; or

12.2.c. For new sections of river, have completed a minimum of forty (40) commercial whitewater expeditions as a trip leader, in a raft, on a river that requires a commercial whitewater guide in every raft, and have completed six (6) familiarization trips on the section of the river that he or she will act as a trip guide; and

12.2.d. Be knowledgeable and capable of giving a suitable orientation talk to and supervise the passengers on the commercial whitewater expedition on subjects which may include, but not be limited to, trip safety, trip description, personal flotation devices, how to stay in the boat and how to paddle and throw lines.

12.2.e. A commercial whitewater trip leader qualified on any river or portion of a river prior to the effective date of this rule remains qualified on those rivers or portions of rivers as long as he or she meets the requirements set forth in subdivision 12.1.7 of this rule.

12.3. Trip Guides or commercial whitewater operations on the Shenandoah River, a commercial whitewater outfitter may employ the services of guides who are at least sixteen (16) years old and otherwise meet the qualifications set forth in subsection 12.1 of this rule.

12.4. Commercial whitewater outfitters may request variations from the trip leader or trip guide qualifications set forth in this section. Requests for variations must be made in writing to the director and the request shall substantiate that the variation does not reduce the intent of the qualifications set forth in this rule.

12.5. Documents relating to the requirements of this section shall be kept at the commercial whitewater outfitter's base camp for inspection by the director or his or her representative.

§58-12-13. Enforcement and Penalties.

13.1. Penalty for Violation. Any person who violates any provision of W. Va. Code §§20-2-23a and 20-2-23d or this rule is subject to the penalties prescribed in W. Va. Code §20-2-23d.

13.2. **Modification, Suspension or Revocation of License.** If the director determines that a pattern of violations of any requirement of this rule or any term or condition of a license exists or has existed as a result of the commercial whitewater outfitter's lack of reasonable care or diligence, or that the violations are willfully caused by it, the director shall immediately issue an order directing the commercial whitewater outfitter to show cause why the license should not be modified, suspended, or revoked and giving thirty (30) days in which to request a hearing subject to the provisions of W. Va. Code §29A-5-1 et. seq. Within sixty (60) days following the hearing, the director shall issue and furnish to the commercial whitewater outfitter a written decision, and the reasons for the decision, concerning the modification, suspension, or revocation of license. For failing to show cause, the director may modify, suspend, or revoke the license, forfeit the commercial whitewater outfitter's bond posted under W. Va. Code §20-2-23d, and give notice to the Attorney General of the State to seek collection of the forfeiture without delay.

13.3. License modification, suspension, and revocation procedures are governed by the provisions of W. Va. Code §29A-5-1 et. seq. unless otherwise specified in this rule.

§58-12-14. Appeals.

14.1. The terms and conditions of a license are appealable under the provisions of W. Va. Code §29A-5-1 et. seq.